



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3829-99

22 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 1 August 1983 for four years at age 19. The record reflects that on 2 November 1983, while in recruit training, you were counseled regarding your failure to pass the physical training test and were assigned to the remedial physical fitness company. You were told that you had 10 working days in which to successfully pass this test or you would be processed for separation due to your inability to meet Navy standards. You completed recruit training and were assigned to the USS JACK WILLIAMS (FFG-24).

The record further reflects that you were advanced to SN in April 1985. You were counseled again on 13 September 1985 and advised that you did not meet current health and physical readiness program standards due to dietary indiscretion or inactivity which could be controlled by diet or an exercise regime. You were informed that you were not eligible for frocking or advancement.

On 24 October 1985, the medical record reflects that the ship's chief corpsman was called to berthing where he found you sitting on the deck in the head holding a wash cloth around your lower shin which was bleeding. A varicose vein on the surface of your leg had burst while you were in the shower. It was noted that you had varicose veins on both lower legs, you were obese, and were on the command's weight control program. The bleeding was stopped by direct pressure and the area was covered with a wrap. Total bed rest and leg elevation was prescribed for the remainder of the day. No further entries appear in the medical record until 11 December 1985, when you were evaluated by the squadron medical officer for obesity and the spontaneous varicose vein rupture. The medical officer noted that you reported an 80 pound weight gain in the past two years and a craving for food, especially sweets. The medical officer opined that the obesity was probably due to overeating but could not rule out thyroid problems. No diagnosis was made.

During the months of December 1985 and January 1986 you received two nonjudicial punishments (NJP) for two instances of assault, violation of a general regulation, disobedience of an order, and resisting apprehension. Thereafter, you were counseled regarding your two incidents of assault and disobedience, and warned that failure to take corrective action could result in administrative separation under other than honorable conditions.

You were seen again on 6 March 1986 for the varicose veins in both of your legs. The examining doctor opined that there was no deep vascular disease. It was noted that you had lost weight from 279 to 249 pounds, and it was recommended that you have thyroid function tests done upon return to the United States.

On 25 June 1986 you were notified that discharge was being considered by reason of misconduct due to commission of a serious offense and convenience of the government by reason of obesity. You were advised of your procedural rights and told that if separation was approved it could be under other than honorable conditions. You declined to consult with counsel and waived your right to an administrative discharge board (ADB). On 27 June 1986 you received a third NJP for absence from your appointed place of duty.

On 11 July 1986 the commanding officer recommended separation with a general discharge. He stated that you were ill-suited physically and by performance to continue in the Navy, you had not made any significant effort to reduce your weight, and your continued misconduct demonstrated an unwillingness to conform to acceptable levels of military standards of conduct. On 18 July 1986 you received your fourth NJP for a brief period of UA of about two hours.

On 2 August 1986 the Chief of Naval Personnel directed discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. You were so discharged on 21 August 1986.

The record reflects that on 23 December 1989 the Naval Military Personnel Command reissued your DD Form 214. The reason for the reissuance is not shown in the record.

On 13 February 1991 the Naval Discharge Review Board denied your request for upgrade of your discharge. This Board also reviewed your discharge on 29 October 1993 and also denied a change in the characterization of service.

On 20 May 1997, the Department of Veterans Affairs determined that your service was terminated under other than honorable conditions and denied benefits for any disabilities found to be service-connected. However, on 30 October 1997, the Social Security Administration found you were entitled to disability insurance benefits commencing on 12 September 1996.

The Board reconsidered your case again only because it was unable retrieve the file of its last review from the archives. In review of your current application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, need for veterans medical benefits, and the fact that it has been 14 years since you were discharged. The Board noted your contention that you are totally disabled from the same condition that resulted in the ruptured vein while you were on active duty. The Board also noted your letter to a veterans' service officer claiming that you did not start gaining excess weight until you enlisted in the Navy, you could not lose weight because the chemicals in the food did not agree with your body chemistry, you never received follow-up treatment for the vein rupture, the Navy should have discharged you after the second or third warning for failing to pass the physical training test, and you had no control over your misconduct because you were intoxicated.

The Board concluded that the foregoing factors, contentions and claims were insufficient to warrant recharacterization of your discharge given your record of four NJPs, two of which were for serious offenses. The Board is well aware the difficulty some individuals have in controlling their weight aboard ship and that adherence to weight control program policy was not uniformly followed by all commands and units. However, your contention that the Navy is responsible for your being overweight is without merit. It appeared to the Board that your weight problems aggravated your varicose vein condition. Your contention that you received no follow-up treatment is not

supported by the evidence of record. Whether the command should have processed you earlier in your enlistment for failure to weight standards could not be determined by the Board. The fact that you were not processed suggested to the Board that the command gave you every consideration and opportunity to complete your enlistment since you had made some progress in losing weight. The Board noted that even though you had two NJPs for serious offenses, it was not until a third offense was referred to NJP that separation processing was initiated. Your contention you had no control over the misconduct is also without merit. Alcohol abuse does not excuse misconduct. The Board noted the aggravating factor that you waived an administrative discharge board, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Although the commanding officer recommended a general discharge, the Chief of Naval Personnel was not bound by that recommendation since the serious nature of the misconduct warranted discharge under honorable conditions. The fact that the social security administration has awarded you disability insurance benefits does not provide a compelling basis for upgrading your discharge. The Board concluded that the discharge was proper and no change is warranted. Accordingly, you're application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director